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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/665,303	09/19/2000	John T. Santini Jr.	17648-0014	5521

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EXAMINER

RODRIGUEZ, CRIS LOIREN

ART UNIT PAPER NUMBER

3763

DATE MAILED: 11/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/665,303	Applicant(s) SANTINI JR. ET AL.	
	Examiner Cris L. Rodriguez	Art Unit 3763	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 9/14/05.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 57-110 is/are pending in the application.
- 4a) Of the above claim(s) 57-78, 82-84, 89, 90, 95, 96 and 104 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 79-81, 85-88, 97, 98 and 106-110 is/are rejected.
- 7) ☒ Claim(s) 91-94, 99-103 and 105 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>7/26/05, 6/30/05, 10/3/05</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of figure 7b, claims 79-81, 85-88, 91-94, 97-103, and 105-110 in the reply filed on September 14, 2005 is acknowledged. The traversal is on the ground(s) that there is a potential overlap among the illustrated embodiments that does not warrant the figures to be separated. This is not found persuasive because even though there might be overlap in some of the figures, each one of the figures is independent and distinct from each other because some of the elements are not similar (i.e. Figures 7a-7i) and they work in a different way. Therefore, it would have been a burden for the examiner to examine all the distinct species.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 57-78, 82-84, 89, 90, 95, 96, and 104 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on September 14, 2005.

3. Please note that claims 89, 90, and 104 have been withdrawn from consideration by the examiner because the claimed elements are not shown in the elected species.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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5. Claims 79-81, 85-88, 97, 98, and 106-110 are rejected under 35 U.S.C. 102(b) as being anticipated by Gross (US 5,380,272).

Gross discloses a medical device including a substrate 10, reservoirs 30, and a release system. With respect to claim 86, the device is capable of delivering any drug.

Allowable Subject Matter

6. Claims 91-94, 99-103, and 105 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.


7. The following is a statement of reasons for the indication of allowable subject matter: the art of record does not teach or render obvious at least two discrete degradable reservoir caps covering the at least two reservoirs.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cris L. Rodriguez whose telephone number is 571-272-4964. The examiner can normally be reached on 7:30 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Lucchesi can be reached on 571-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

November 9, 2005


Cris L. Rodriguez
Primary Examiner
Art Unit 3763